

**THIS DISPOSITION  
IS NOT CITABLE AS PRECEDENT  
OF THE T.T.A.B.**

3/12/02

Hearing:  
December 12, 2001

Paper No. 10  
PTH

**UNITED STATES PATENT AND TRADEMARK OFFICE**

---

**Trademark Trial and Appeal Board**

---

In re RDP Technologies, Inc.

---

Serial No. 75/845,967

---

John F. McNulty of Paul & Paul for RDP Technologies, Inc.

Curtis W. French, Trademark Examining Attorney, Law Office  
115 (Tomas Vlcek, Managing Attorney).

---

Before Quinn, Hohein and Hairston, Administrative Trademark  
Judges.

Opinion by Hairston, Administrative Trademark Judge:

An application has been filed by RDP Technologies,  
Inc. to register the mark ORGANIC LIME for "fertilizers for  
domestic use, horticultural or agricultural use; potting  
soil and soil conditioners for agricultural, domestic and  
horticultural use" in class 1; and "top soil and mulch" in  
class 31.<sup>1</sup>

---

<sup>1</sup> Application Serial No. 75/845,967, filed November 10, 1999,  
alleging a bona fide intention to use the mark in commerce.

The Trademark Examining Attorney has refused registration under Section 2(e)(1) of the Trademark Act on the ground that applicant's mark, if applied to the identified goods, would be merely descriptive of them.

When the refusal was made final, applicant appealed. Applicant and the Examining Attorney have filed briefs on the case and an oral hearing was held.

Applicant, in urging that the refusal be reversed, argues that "[t]here is no such thing as organic lime", and therefore the term sought to be registered is incongruous as applied to the identified goods. According to applicant, because lime is a naturally occurring substance, it is not organic in nature, that is, "[i]t does not use nor is it produced with fertilizers of animal or vegetable matter." (Brief, pp. 1-2.)

The Examining Attorney, in support of the refusal, has submitted an entry for the word "*organic*" from The American Heritage Dictionary of the English Language, Third Edition (1992), and points in particular to the following definitions thereof:

- Using or produced with fertilizers of animal or vegetable matter, using no synthetic fertilizers or pesticides: *organic gardening, organic vegetables*
- Free from chemical injections or additives, such as antibiotics or hormones: *organic chicken.*

We also judicially notice that the word "*organic*" is defined in Webster's New Collegiate Dictionary (1979) as, inter alia, "an organic substance as **a**: a fertilizer of plant or animal origin."<sup>2</sup>

Further, the Examining Attorney made of record from the same dictionary the definition of "*lime*" as meaning "[a]ny of various mineral and industrial forms of calcium oxide differing chiefly in water content and percentage of constituents such as silica, alumina, and iron," and excerpts from the NEXIS database which evidence the use of lime and fertilizer for lawns and gardens.

It is well settled that a term is considered to be merely descriptive of goods, within the meaning of Section 2(e)(1) of the Trademark Act, if it immediately describes an ingredient, quality, characteristic or feature thereof or if it directly conveys information regarding the nature, function, purpose or use of the goods. In re Abcor Development Corp., 588 F.2d 811, 200 USPQ 215, 217-18 (CCPA 1978). It is not necessary that a term describe all of the properties or functions of the goods in order for it to be considered to be merely descriptive thereof; rather it is

---

<sup>2</sup> The Board may take judicial notice of dictionary definitions. *University of Notre dame du Lac v. J.C. Gourmet Food Imports Co., Inc.*, 213 USPQ 594 (TTAB 1982), *aff'd*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983).

sufficient if the term describes a significant attribute or idea about them. Moreover, whether a term is merely descriptive is determined not in the abstract but in relation to the goods for which registration is sought. In re Bright-Crest, Ltd., 204 USPQ 591, 593 (TTAB 1979).

It is clear from the dictionary entries that the word ORGANIC describes a characteristic or feature of fertilizers and the like which are of plant or animal origin. Moreover, the word LIME has descriptive significance with respect to such goods in that it describes an ingredient thereof. We note in this regard that applicant has indicated that its products start out as sewage sludge, which contains organic material and some lime.<sup>3</sup>

The combination of the terms ORGANIC LIME does not result in an incongruity. Rather, the combination simply conveys the merely descriptive meaning of its parts. Under the circumstances, we agree with the Examining Attorney's conclusion that the words ORGANIC LIME are merely descriptive of the nature of applicant's goods, namely, that they are fertilizers and soil products that are organic in their origin and enhanced with lime.

---

<sup>3</sup> Although the involved application is an intent-to-use application, it would appear that applicant has begun to produce the goods which are the subject of the application.

Ser. No. 75/845,967

**Decision:** The refusal to register under Section 2(e)(1) is affirmed.